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SJC-13304

ANTHONY MICHAEL BRANCH vs. FEDERAL NATIONAL MORTGAGE
ASSOCIATION & another.¹

December 29, 2022.

Supreme Judicial Court, Superintendence of inferior courts.
Summary Process, Appeal. Practice, Civil, Summary process.

The petitioner, Anthony Michael Branch, filed a petition in the county court, pursuant to G. L. c. 211, § 3, seeking relief from monthly use and occupancy payments that a judge of the Housing Court ordered him to pay pending his appeal in a summary process action. The petitioner also requested, in the alternative, that this court issue an order requiring the Appeals Court to docket a purported appeal from the order of an Appeals Court single justice affirming the Housing Court's use and occupancy order. The petition was denied by a single justice of this court. We affirm.

Background. After the foreclosure of Branch's residence, the Federal National Mortgage Association (Fannie Mae) initiated a summary process action against Branch. Judgment entered in favor of Fannie Mae as to possession, and Branch appealed. A judge in the Housing Court waived the appeal bond, but ordered Branch to pay monthly use and occupancy payments of \$1,800. Branch sought interlocutory review of the use and occupancy order before a single justice of the Appeals Court, pursuant to G. L. c. 239, § 5 (f). The single justice reduced the monthly payment amount to \$500 on the basis of financial hardship.

¹ Roberto Pina Cardoso.

While Branch's appeal from the judgment in the summary process action (substantive appeal) remained pending, Fannie Mae transferred title of the property to Roberto Pina Cardoso. As a result, the existing use and occupancy order was vacated at Fannie Mae's request. Cardoso was subsequently permitted to intervene in the summary process action, and he moved for use and occupancy payments from Branch, who continued to reside on the property. After a hearing before a judge in the Housing Court, Branch was ordered to pay monthly use and occupancy payments of \$1,000. Branch again sought review before a single justice of the Appeals Court. A different single justice affirmed the second use and occupancy order of the lower court.

Branch filed a notice of appeal from the order of the second single justice. A third single justice of the Appeals Court struck the notice of appeal, indicating that Branch had no right to additional appellate review of the use and occupancy order. Branch filed another notice of appeal and, later, a motion to vacate the order striking his notice of appeal. That motion was denied, and Branch filed yet another notice of appeal.

The last of Branch's notices of appeal resulted in an appeal being docketed in the Appeals Court. Nonetheless, Branch filed this petition in the county court, pursuant to G. L. c. 211, § 3, requesting that this court vacate the use and occupancy order, reduce it to \$500 per month, or order the Appeals Court to docket his appeal from the second single justice's ruling affirming the use and occupancy order. A single justice of this court denied the petition, and Branch appealed.

While this appeal was pending, Branch sought to stay proceedings in both of his appeals before the Appeals Court. The Appeals Court denied that request, and because Branch's existing substantive appeal in the summary process action "relate[d] to the collateral issue of use and occupancy," the court ordered that both of his appeals there be "paired for consideration by the same panel" of that court. Branch made the apparent choice to file a brief in only the substantive summary process appeal, and his other appeal before the Appeals Court was subsequently dismissed pursuant to rule 19.0 of the Rules of the Appeals Court.

Discussion. A single justice properly denies relief under G. L. c. 211, § 3, "where the petitioning party has or had adequate and effective avenues other than G. L. c. 211, § 3, by which to seek and obtain the requested relief" (citation

omitted). Marnerakis v. Phillips, Silver, Talman, Aframe & Sinrich, P.C., 445 Mass. 1027, 1027 (2006). "Decisions of a single justice will not be disturbed on appeal absent clear error of law or abuse of discretion." Adjarkey v. Central Div. of the Hous. Court Dep't, 481 Mass. 830, 833 (2019), quoting Fogarty v. Commonwealth, 406 Mass. 103, 106 (1989).

Where, as here, a judge in the Housing Court has ordered an occupant in a summary process action to make use and occupancy payments pending appeal, the occupant is entitled to seek review from a single justice of the Appeals Court. See G. L. c. 239, § 5 (f). The petitioner did so here when he was initially ordered to make use and occupancy payments to Fannie Mae, and again later when he was ordered to make use and occupancy payments to Cardoso.

Indeed, the petitioner not only received review from a single justice of the Appeals Court, but also received the opportunity to raise the issue before a full panel of the Appeals Court. As noted, Branch's existing substantive appeal in the summary process action had already been docketed. See Perry v. U.S. Bank Trust, N.A., 484 Mass. 1054, 1054 (2020) (petitioner was "free to raise his claims concerning . . . the use and occupancy payments" in his direct appeal from summary process judgment). Yet, despite this, Branch sought to stay his substantive appeal while he continued to pursue relief from this court.

It is well established that "this court's general superintendence power is truly extraordinary, reserved for exceptional circumstances where a litigant demonstrates a substantial claim of violation of his or her substantive rights that cannot be remedied by any other available means." McMenimen v. Passatempo, 452 Mass. 178, 184 (2008). This was no such instance, and Branch was "not entitled as of right to an additional layer of review of the . . . use and occupancy orders in this court." Bigelow v. Massachusetts Courts Promulgator of Official Forms, 484 Mass. 1056, 1057 (2020).

The single justice did not err or abuse his discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

The case was submitted on briefs.

Anthony Michael Branch, pro se.

Karl F. Stammen, Jr., for Roberto Pina Cardoso.